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IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUL 19 2011 ★
BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
MICHELINA VARGAS and ANGEL VARGAS, SR.

Plaintiffs,

-against-

**CIVIL CASE
MANAGEMENT PLAN**

11-CV-2600 (BMC)

ZIMMER INC., ZIMMER HOLDINGS, INC. and
ZIMMER ORTHOPAEDIC SURGICAL PRODUCTS, INC.

Defendants.
-----X

COGAN, District Judge

After consultation with counsel for the parties, the following Case Management Plan is adopted. This plan is also a scheduling order pursuant to Federal Rules of Civil Procedure 16 and 26(f).

- A. The case is to be tried to a jury.
- B. Non-Expert Discovery:
 - 1. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Eastern District of New York. The parties request a fact discovery period in excess of the 90 days this Court contemplated for the completion of fact discovery. Plaintiffs have requested this extension because this case is a complicated products liability case against the manufacturer of an allegedly defective knee implant. Defendants have consented to plaintiffs' proposed fact discovery cutoff but do not agree that this case is particularly complicated. In addition, because of the complexity of this

products liability case, Plaintiffs anticipate the need to propound more than the 25 interrogatories permitted under Fed. R. Civ. 33. Defendants do not agree that there is any need to provide plaintiffs with any additional interrogatories. Further, Defendants believe it is premature to raise this when discovery has not yet begun.¹ The parties propose that all non-expert discovery be completed by May 14, 2012, which shall not be adjourned except upon a showing of good cause and further order of the Court. Interim deadlines for specific discovery activities may be extended by the parties without application to the Court, provided the parties are certain that they can meet the discovery completion date.

2. Joinder of additional parties must be accomplished by September 12, 2011.
3. Amended pleadings may be filed without leave of Court until September 12, 2011.
- C. Plaintiffs will file Attachment B following the conclusion of expert discovery on September 12, 2012.
- D. Motions:
 1. Upon the conclusion of non-expert discovery, and no later than the date provided below, the parties may file dispositive motions. The parties shall agree to a schedule and promptly submit same for the Court's approval, providing for no more than three rounds of serving and filing papers; supporting

¹ Plaintiffs believe this is the proper time to raise preliminary discovery issues and Plaintiffs will seek leave of Court to serve in excess of the 25 interrogatories contemplated by Fed. R. Civ. 33 given the complex nature of this medical products liability case.

granted
to
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BMC

affidavits and briefs, opposing affidavits and briefs, and reply affidavits and briefs.

2. The last day for filing dispositive motions shall be October 10, 2012.

a. There shall be no cross-motions. Any motions not made by the agreed date shall, unless the Court orders otherwise, not be considered until after the timely-filed motion is determined.

b. Papers served and filed by the parties shall conform to the requirements set out in the Court's Individual Practices.

E. Any request for relief from a date provided in this Case Management Plan shall conform to the Court's Individual Practices and include an order, showing consents and disagreements of all counsel, setting out all dates that are likely to be affected by the granting of the relief requested, and proposed modified dates. Unless and until the Court approves the proposed order, the dates provided in this Plan shall be binding.

F. Pre-Trial Motions:

Applications for adjournments and for discovery or procedural rulings will reflect or contain the positions of all parties, as provided by the Court's Individual Rules, and are not to modify or delay the conduct of discovery or the schedules provided in this Case Management Plan except upon leave of Court.

SO ORDERED

Date: Brooklyn, New York

July 18, 2011

/s/(BMC)

U.S.D.J. /

ATTACHMENT A

The parties have agreed on the following dates and discovery plan pursuant to Fed.R.Civ.P. 26:

DISCOVERY ACTIVITIES	COMPLETION DATE
Mandatory Initial Disclosures	August 25, 2011 All parties
Certificate of Interested Persons and Corporate Disclosure Statement [each party who has not previously filed must file immediately]	
Motions to Add Parties or to Amend Pleadings	September 12, 2011
Disclosure of Experts, including <i>curriculum vitae</i> and Rule 26(a)(2) reports of the experts	<p>Plaintiffs' Disclosures: June 14, 2012</p> <p>Defendants' Disclosures: July 27, 2012</p> <p>Rebutal Reports: August 10, 2012</p> <p>Expert depositions must be taken prior to: September 10, 2012</p>

Fact Discovery Deadline (to be completed)	May 14, 2012
Dispositive Motions	October 10, 2012
Filings Prior to Trial (as set forth in section IV 3. of the Court's Individual Practices - April 2011) and Joint Pretrial Order:	No later than 14 days prior to Trial Readiness Conference.
All Other Motions Including Motions <i>In Limine</i>, Trial Briefs:	No later than 14 days prior to Trial Readiness Conference.
Trial Readiness Conference	_____, 2012
Trial Begins	_____
Estimated Length of Trial [trial days]	15 days - Plaintiffs' assessment 7 days - Defendants' assessment.
Jury / Non-Jury	Jury Trial

All Parties Consent to Proceed Before Magistrate Judge	Yes____ No <u>X</u>